

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MID-AMERICA DAIRYMEN, INC.
SOUTHERN FOODS GROUP LP
and MILK PRODUCTS LLC,

Defendants

Civil Action

No.: 3-97CV 2162-P

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America (hereinafter "United States"), having filed its complaint herein on September 3, 1997, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement to assure that competition is not substantially lessened;

AND WHEREAS, defendants have represented to plaintiff that the divestiture required below and the relief related thereto can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties thereto, it is hereby

ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and each of the defendants hereto. The complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this final judgment:

A. "Mid-America" means Mid-America Dairymen, Inc., a Kansas corporation with headquarters in Springfield, Missouri, its members, directors, officers, employees, affiliates,

joint venture or limited liability company partners, successors or assigns, and any agent or representative thereof.

B. "Southern Foods" means Southern Foods Group LP, a partnership organized under the laws of Delaware with headquarters in Dallas, Texas, its members, directors, officers, employees, affiliates, joint venture or limited liability company partners, successors or assigns, or any agent or representative thereof.

C. "Milk Products" means Milk Products LLC, the limited liability company formed by Allen A. Meyer to receive certain dairy processing assets located in New Mexico, Texas and Louisiana formerly owned by Borden/Meadow Gold Dairies Holdings, Inc., its members, directors, officers, employees, affiliates, joint venture or limited liability company partners, successors or assigns, or any agent or representative thereof.

D. "Divestiture Assets" or "the Assets" means the Borden/Meadow Gold assets located in New Mexico, Texas and Louisiana that Mid-America will acquire through purchase of the voting stock of Borden/Meadow Gold Dairies Holdings, Inc.

E. "The Marks" means certain trademarks described in a Sublicense Agreement between Southern Foods and Milk Products, which include Borden, Elsie and other trademarks granted to Mid-America and/or Southern Foods by license from Borden, Inc. and BDH Two, Inc.

F. "Divest" or "Divestiture" means the complete relinquishing of all rights and equity and other interests in the Divestiture Assets, provided that if Mid-America divests the Assets to Milk Products, it may extend to Milk Products the Loan defined herein. Divestiture also means to grant an exclusive, royalty-free sublicense to use the Marks in Texas, Louisiana and New Mexico and a non-exclusive, royalty-free sublicense to use the Marks in Alabama, Arkansas, Florida, Mississippi, Tennessee, and Mexico.

G. "Milk Products Loan" or "the Loan" means the approximately \$40 million advanced by Mid-America or Mid-Am Capital LLC for the purchase by Milk Products of the assets located in New Mexico, Texas and Louisiana held by Borden/Meadow Gold Dairies Holdings, Inc., and for which Milk Products has executed Note Purchase Agreements and other related debt instruments setting forth the terms of the loan arrangements.

III. APPLICABILITY

A. The provisions of this final judgment shall apply to the defendants, Mid-America Dairymen, Southern Foods Group, and Milk Products, their respective successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this final judgment by personal service or otherwise.

B. Each defendant shall provide written notice to the plaintiff no later than 10 days subsequent to the effective date of any action whereby the defendant (1) changes its name or corporate or organizational structure; (2) liquidates or otherwise ceases operation; or (3) declares bankruptcy. Such notice shall include a full explanation of the action that invokes this provision and shall include full documentation required to be filed with any judicial, administrative or other official entity in connection with that action.

IV. DIVESTITURE

A. Defendant Mid-America is hereby ordered and directed in accordance with the terms of this Final Judgment, within 65 days of the filing of this Final Judgment, or five days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets and the Marks to a purchaser acceptable to the United States. Plaintiff may, in its sole discretion, extend the time period for an additional period of time, not to exceed 90 calendar days in total.

B. Unless the United States otherwise consents in writing, the divestiture of the Assets and the Marks pursuant to Paragraph IV (A), or by a trustee appointed pursuant to Paragraph V of this Final Judgment, shall include all of the Assets and the Marks to be divested to a purchaser in such a way as to satisfy the United States in its sole discretion that the Assets and the Marks can and will be used by the purchaser as part of a viable, ongoing business engaged in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana. The divestiture, whether pursuant to Paragraph IV or V of this Final Judgment shall

be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchaser has the capability and intent of competing effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana; and (3) none of the terms of any agreement between the purchaser and Mid-America give Mid-America the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana.

C. The Divestiture of the Assets and the Marks to Milk Products, if accomplished in accordance with this Final Judgment within twenty-four hours following the acquisition by Mid-America of the voting stock of Borden/Meadow Gold, is acceptable to the United States and no further approval of plaintiff pursuant to this Paragraph IV or Paragraph IX is required.

V. APPOINTMENT OF TRUSTEE

A. In the event that Mid-America has not divested the Divestiture Assets and the Marks within the time specified in Paragraph IV (A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Assets and the Marks.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to accomplish the divestiture of the Assets and the Marks. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Paragraphs V and IX of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Paragraph V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Mid-America any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Mid-America shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Paragraph IX of this Final Judgment.

C. The trustee shall serve at the cost and expense of Mid-America, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Mid-America and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents

retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and the Marks and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Mid-America shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of defendants, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Mid-America shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, that the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter

thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs.

VI. DIVESTITURE OF THE LOAN

If Mid-America sells the Divestiture Assets to Milk Products,

A. Mid-America shall reduce its holdings in the Milk Products Loan as follows:

(1) to \$30 million or less by December 31, 1997;

(2) to \$13 million or less by September 1, 1998; and

(3) to zero by September 1, 1999.

B. Mid-America may sell off any portion of the Milk Products Loan in order to meet the requirements of Paragraph VI A., provided that no third party purchaser of all or part of the Loan shall (1) be affiliated in any way with Mid-America or (2) be a person engaged in the production, sale or delivery of milk in the sales area of Milk Products.

C. In connection with sale of the Milk Products Loan pursuant to Paragraph VI (A), Mid-America shall not provide a guarantee to any third party purchaser, provided, however, that Mid-America may, in its discretion, after it has reduced its holdings in the Loan to not more than \$13 million, guarantee some or all of the remaining \$13 million. Any guarantee by Mid-

America must be without recourse against Milk Products for any sums paid by Mid-America by virtue of the guarantee.

D. At no time while Mid-America holds all or part of the Milk Products Loan shall Mid-America (1) require that Milk Products seek approval from, or give notice to, Mid-America before incurring any indebtedness, or (2) place any restriction on Milk Products' ability to conduct its operations as it sees fit.

VII. ACQUISITIONS AND ACCESS TO INFORMATION

During any period in which Mid-America retains an ownership interest in Southern Foods,

A. No member, officer, employee or agent of Southern Foods or Mid-America (other than members, officers, employees, or agents of Land-O-Sun Dairy LLC, who are not otherwise affiliated with Mid-America or Southern Foods) shall be employed by or serve as an officer, director, member, or agent of Milk Products.

B. No member, officer, employee or agent of Milk Products shall be employed by or serve as an officer, director, member or agent of Mid-America or Southern Foods (other than members, officers, employees or agents of Land-O-Sun Dairy LLC, who are otherwise not affiliated with Mid-America or Southern Foods).

C. Neither Mid-America nor Southern Foods shall merge or consolidate with, acquire membership in or securities or assets of, or provide loans or other financing to (except for trade credit extended in the ordinary course of business) Milk Products, without having first obtained the written approval of the United States. Any request for such approval shall be directed to the Antitrust Division, U.S. Department of Justice, Transportation, Energy and Agriculture Section, with a copy to the Director of Operations.

D. Mid-America, Southern Foods, and Milk Products shall not disclose to each other, directly or indirectly, any competitively sensitive information including, but not limited to, information concerning present or future prices or other terms or conditions of sale including discounts, slotting allowances, bids or price lists, costs, capacity, distribution, marketing plans or territories, supply, sales forecasts, customer relationships (including the identity of actual or potential customers or quantities sold to any particular customer).

E. Notwithstanding Paragraph VII (D), Mid-America may, during any period in which it is a creditor of Milk Products, obtain and retain copies of the following information, solely to protect its interests as a creditor:

(1) copies of Milk Products' federal income tax returns for each year; and

(2) quarterly financial statements, including a balance sheet, a statement of profits and losses, and a statement of cash flow, aggregated for the entire company. Nothing in this

provision shall limit the information that a purchaser of any portion of the Milk Products Loan may request and obtain, subject to reasonable commercial credit practices.

F. Nothing in this Final Judgment shall prohibit the orderly transfer of business records, reports or accounting materials from Borden/Meadow Gold to Southern Foods or to Milk Products, which shall be accomplished within 120 days of the closing of the transaction.

VIII. SUBLICENSE AGREEMENT

A. Southern Foods, as sublicensor of the Marks, shall promptly notify Borden, Inc. and BDH Two, Inc., the owners of the Marks, of any unauthorized use of the Marks when such use comes to the attention of Southern Foods from any source, including Milk Products, and Southern Foods shall take all actions as may be required by Borden, Inc. and BDH Two, Inc. regarding the unauthorized use of the Marks.

B. Neither Mid-America nor Southern Foods shall assert or claim that on any sublicensee of the Marks' sale of an equity interest in the sublicensee or any change in control or ownership in the sublicensee will affect or diminish the sublicensee's rights in or use of the Marks.

C. Mid-America and Southern Foods shall ensure that the rights that any sublicensee obtains in the Marks are equal to all the rights and privileges that Southern Foods obtains for itself in its license of the Marks from Borden, Inc. and BDH Two, Inc.

IX. NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, any proposed divestiture pursuant to Paragraph IV, V or VI of this Final Judgment, Mid-America or the trustee, whoever is responsible for the divestiture, shall notify plaintiff of the proposed divestiture and provide documentation that the conditions set forth in Paragraphs IV through VII have been met.

If the trustee is responsible, it shall similarly notify Mid-America. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from Mid-America, the proposed purchaser, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Mid-America and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from Mid-America, the proposed purchaser, any third party, and the trustee, whichever is later, the United States shall provide written notice to Mid-America and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Mid-America and the trustee that it does not object, then the divestiture may be consummated, subject only to Mid-America's

limited right to object to the sale under Paragraph V (B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, or by Mid-America in accordance with Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

X. AFFIDAVITS

A. Within twenty (20) calendar days of the closing of any transaction in which Mid-America directly or indirectly acquires all or any part of the assets or capital stock of Borden/Meadow Gold, and every thirty (30) calendar days thereafter until the divestiture of the Divestiture Assets and the Loan has been completed pursuant to Paragraphs IV, V and VI of this Final Judgment, Mid-America shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Paragraphs IV, V and VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets or in the Loan, and shall describe in detail each contact with any such person during that period.

B. Mid-America shall preserve all records of all efforts made to divest the Loan and the Assets. This provision shall not apply to divestiture of the Assets if they are sold pursuant to Paragraph IV (C) herein.

XI.
COMPLIANCE INSPECTION

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Paragraph XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

**XIII.
TERMINATION**

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

**XIV.
PUBLIC INTEREST**

Entry of this Final Judgment is in the public interest.

Dated: 2/27/98

_____/s/_____
JORGE A. SOLIS
United States District Judge